
(1961) 09 BOM CK 0014
In the Bombay High Court
Case No : F.A. No. 79 of 1956

Jagannath Hazarimal and Others

APPELLANT

Vs

State of Bombay

RESPONDENT

Date of Decision : 18-09-1961

Acts Referred:

Court Fees Act, 1870 — Section 13
Criminal Procedure Code, 1898 (CrPC) — Section 517, 520, 524
Limitation Act, 1908 — Article 14

Citation : AIR 1963 Bom 83 : (1962) 64 BOMLR 150 : (1963) CriLJ 745 : (1962) ILR (Bom) 252

Hon'ble Judges : Naik, J;Abhyankar, J

Bench : Division Bench

Advocate : C.S. Dharmadhikari, for the Appellant; G.R. Mudholkar, Asst. Govt. Pleader, for the Respondent

Judgement

Abhyankar, J.—The plaintiffs have filed this appeal against the dismissal of their suit by the Second Additional District Judge, Amravati, on a preliminary finding on the issue of limitation.

2. The plaintiff No. 1 is a partnership firm going by the name of Jagannath Hazarimal firm doing business at Amravati and of which plaintiffs 2 to 4 are partners. The plaintiffs' case is that the partnership carried on business in cotton seed at Amravati and held a licence required for doing that business or for dealing with cotton seed under the Cotton Seed Control Order 1947. There was a local Act in the then State of Madhya Pradesh called the Specified Commodities Control Act. Under that Act Control Order could be issued in respect of specified commodities and accordingly an Order called the Cotton Seed Control Order was substituted by a similar Order in 1948. The plaintiffs had purchased cotton seed at Akola, Khamgaon and other places and there being no restrictions on transport of cotton seed within the State the firm wanted to export cotton seed after taking permit and for that purpose it despatched cotton seed by railway to Gondia for being taken to Jabalpur. Cotton seed bags were taken to Jabalpur and

were stocked in a godown owned by Ramprasad and Gyarsilal at Jabalpur. The cotton seed stock was stocked at Jabalpur with a view to its further transport as soon as export facilities were available. The plaintiffs case is that cotton seed bags were not stored at Jabalpur for the purpose of selling or for dealing in cotton seed which was to be covered by the regional licence. Admittedly the plaintiffs held a licence for the Amravati district under the Cotton Seed Control Order of 1947.

3. It was alleged that about 63 bags of cotton seed were sold at Jabalpur on or about the 16th November 1947. The police prosecuted plaintiff No. 2 Hazarimal son of Jagannath, his munim Gopilal, and two local merchants of Jabalpur, Gyarsilal and Ramprasad for the alleged contravention u/s 12 of the Specified Commodities Act read with clause (9) of the Cotton Seed Control Order 1947. The Charge was that in contravention of the Order not being possessed of any licence for the Jabalpur District the accused had sold cotton seed at Jabalpur on 16-11-1947. The accused were tried in the Court of Shri B.C. Rai, Magistrate First Class, Jabalpur, in criminal case No. 40 of 1948. By his judgment dated 21-8-48 the trying Magistrate acquitted plaintiff No. 2 Hazarimal and his munim Gopilal. He however convicted Gyarsilal and Ramprasad for the offence with which they were charged. During proceedings before the Court, cotton seed bags, 1001 in number, were seized as property in respect of which offence was committed. By paragraph 16 of the judgment it was ordered that the stock of cotton seed seized may be returned to the owners. It is not deaf under what circumstances the revision application was preferred by plaintiff No. 2 Hazarimal to the Sessions Judge, Jabalpur. But there is on record Exhibit P-7 which shows that by the order dated 17-12-1948, the Sessions Judge, Jabalpur, after hearing the parties ordered u/s 520 of the Code of Criminal Procedure that the cotton seed seized be returned to the owner Hazarimal immediately.

4. In spite of this acquittal, Hazarimal was again prosecuted in the Court of the Magistrate First Class, Amravati In Criminal Case No. 67 of 1949 on identical facts. This prosecution resulted in the conviction of plaintiff No. 2 Hazarimal under clause 9 (1) of the Central Provinces and Berar Cotton Seed Control Order 1948 punishable u/s 12 of the Specified Commodities Control Act for having committed a breach of condition No. 5 in the licence. He was fined in sum of Rs. 500/- but as respects the property the trying Magistrate observed as follows:

"I think the above punishment is sufficient in a ease like this and so I do not order the confiscation of the surety bond Exhibit P-61."

5. The reference to confiscation of the surety bond arose because the property which was released apparently by the Sessions Judge must have been released under a bond executed by the plaintiff Hazarimal and Hazarimal had applied on or about 26-7-1949 for permission to sell the property as it was deteriorating. This permission seems to have been given on that day but the sale-proceeds were deposited by the surety in the Court. It was in this context that the trying Magistrate in Criminal Case No. 67 of 1949 directed that no order of confiscation

of the surely bond was necessary.

6. Against this conviction accused Hazarimal filed an appeal which came to be heard and decided by the First Additional Sessions Judge, Amravati. This was Criminal Appeal Mo. 26 of 1951. By this judgment dated 26-6-1951, the learned Additional Sessions Judge acquitted Hazarimal and quashed his conviction under clause 9 (1) of the Cotton Seed Control Order for alleged breach of condition No. 5 of the licence. But in paragraph 16 of his judgment, the learned Additional Sessions Judge observed as follows:

"The result is that the cotton seed bags seized do not belong to the accused, and shall be dealt with as unclaimed property. The sale proceeds of 1001 bags realised by the accused as suprutdar, if not already deposited in Court, shall be new deposited by him, and shall also be treated on the basis of unclaimed property."

Thus, so far as the sale proceeds of the cotton seed were concerned the property was treated as unclaimed property and was directed to be disposed of as unclaimed property. Being aggrieved by this order regarding the disposal of the property which was then converted into cash on account of the sale, accused Hajarimal preferred a revision in the High Court of Judicature at Nagpur. This revision was disposed of on 6-6-1952. The High Court declined to interfere with the order of the Additional Sessions Judge. However in disposing of the revision it has observed as follows:

"Next it is said that the Court was not right in regarding the property as unclaimed because it was held in a case tried by a Magistrate in Jabalpur that this property belonged to the firm of which the applicant is a partner, I am afraid the decision of the Jabalpur Magistrate is not relevant in this case. If the applicant has really title to the property it would certainly be open to him to establish it in a civil Court. The Court below could only act on the basis of the material before it and that material justifies the conclusion arrived at by it...."

In view of this decision of the High Court the plaintiffs issued a notice to the Deputy Commissioner, Amravati, on 8-7-1952 claiming the sale proceeds as their property because the cotton seed bags seized from them belonged to the firm. The Deputy Commissioner replied to this notice on 31-1-1953 repudiating the claim of the plaintiffs, the suit was therefore filed by the plaintiffs claiming a declaration that 1001 bags of cotton seed in question belonged to the firm Jagannath Hajarimal and its partners and the sale proceeds of that property could not be dealt with as unclaimed property. The suit was filed on 15-6-1953.

7. Amongst other defences the State raised the defence of limitation. The pleading with respect to this defence is stated as follows in paragraph 5 of the written statement:

"It is denied that any cause of action arose on 6-6-1952 as alleged. The cause of action if any arose on 28-8-1951 when Addl. S. J. passed the order. The order is

legal and proper till set aside by suit. No suit for declaration lies. The plaintiff ought to have sued for setting aside the order of Addl. S. J. The limitation for such suit is one year from the date of order under Article 14 of the limitation Act. The suit is therefore barred by limitation."

The learned Judge of the trial Court chose to treat the plea of limitation as raising a preliminary issue and decided that issue by his finding dated 10-1-1956. The learned Judge accepted the contention of the State that the claim in suit was governed by Article 14 of the Limitation Act and that limitation began to run from the date of order of the Additional Sessions Judge and therefore the suit ought to have been filed within one year from the data of that order. That order was passed on 26-6-1951 and the suit which was filed on 15-6-1953 was therefore held to be barred by limitation.

8. We find it difficult to sustain the finding of the learned Additional District Judge on the point of limitation. Article 14 of the Limitation Act is as follows: Column 1 says :

"To set aside any act or order of an officer of Government in his official capacity not herein otherwise expressly provided for...."

This Article would therefore apply if the order of the Additional Sessions Judge in the criminal appeal could be said to be an act or order of the officer of the Government. Now, there is no doubt, and it has not been seriously disputed at the Bar, that a judicial order is not an act or order of an officer of the Government. The act or order of an officer of the Government referred to in Article 14 must necessarily refer to the executive act or administrative act. In a given case it may perhaps cover a quasi judicial act but certainly not the decision of a Court of law which is a judicial act. On this short ground therefore the finding of the Additional District Judge is liable to be set aside.

9. It seems that the learned Additional District Judge has not considered this matter by reference to the wording of Article 14 in the first column at all. There is no doubt that the order was passed in exercise of the powers by the appellate Court u/s 517 read with Section 520 of the Code of Criminal Procedure. The order was not passed in any administrative capacity. There was a list before the Court, one side was claiming right to restoration of property and the other side was disputing that right. The decision was given in the litigation, and we fail to see therefore how such an order could be said either to be an act of the officer of the Government or the order of the officer of the Government. If any authority is needed for this proposition we need refer to the following decisions of this Court viz. Govinda Gala v. Ganu Abaji, 10 Bom LR 749, Ballappa Bhimappa and Others Vs. Tippangowda Basangowda and Others, and Bhopshetti v. Bhat, 42 Bom LR 223 : AIR 1940 Bom 188. The law is therefore well-settled that a i judicial order is not an act or order of an officer of the Government. The claim of the plaintiffs therefore is not covered by Article 14 of the Limitation Act at all.

10. It will also be necessary to see what is the nature of the order that was

passed by the Additional Sessions Judge in appeal when he directed that the property should be treated as unclaimed property. An order under Section 517 of the Code of Criminal Procedure passed at the conclusion of a trial only concludes immediate right to possession but this does not conclude the right or title of any person to the ownership of the property. The real owner may proceed against the holder of the articles and it can not be said that there is any necessity of having that order set aside. Reference may usefully be made with regard to this aspect of the matter to the decision reported in *Queen-Empress v. Trivhovan Manekchand*, ILR 9 Bom 131, and observations at p. 134. The same view has been taken by the Patna High Court as will appear from the case in *Secretary of State v. Lownkaran Karan*, AIR 1920 Pat 182. In that case the above decision of this Court is referred to with approval and it is observed as follows:

"An order u/s 524, directing property seized on suspicion of its being stolen to be forfeited, and ordering the sale proceeds thereof to be credited to Government, is illegal and without jurisdiction, as all that section authorizes is that the Government shall be free to sell the property or to hold it as a trustee for the true owner. A suit therefore for the recovery of possession of such property is maintainable and the fact that such suit is brought more than a year after the order of confiscation is no bar, as it is not necessary to set that order aside."

11. The learned Additional Sessions Judge in the Criminal appeal decided on 26-6-1951 came to the conclusion that the accused-appellant before him had apparently not claimed the property and therefore the property was liable to be treated as unclaimed property. What seems to have been forgotten is that the accused in that case was Hazarimal and not the partnership firm. The plaint claim is laid by the partnership firm known as Jagannath Hazarimal firm of which not only the accused (Hazarimal) but two other persons are partners. The rights of the partners in respect of the property could not possibly be adjudicated upon by the learned Additional Session Judge in making the order regarding disposal of the property u/s 517 read with Section 520 of the Code of Criminal Procedure. This aspect of the case does not seem to have been borne in mind in dealing with the question of limitation of the nature of the order that was passed by the Additional Sessions Judge. In our opinion, it was not necessary for the plaintiffs to claim a declaration for setting aside the order because the real dispute between the parties is whether the plaintiffs are able to establish their right to ownership of the property.

12. We therefore set aside the finding and the consequential judgment and decree of the trial Court. This necessitates remanding the case for decision on merits as several contentions of the parties have not been decided. A certificate of refund u/s 13 of the Court-fees Act shall follow. The suit is remanded to the trial Court for disposal according to law. The respondent shall pay the costs of the appeal.

13. Appeal allowed.